91-1256

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

October Term, 1991

CHARLES KLAVONICK,

Petitioner

vs.

THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS; AND THE BOARD OF TRUSTEES OF THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether in an action brought under the Employee Retirement Income Security Act of 1974, the lower Court erred in granting summary judgment for the Respondent Board of Trustees, by determining that the Respondent acted in a manner which was not arbitrary and capricious, and not contrary to the plain language of Section 3.12 of the Ironworkers of Western Pennsylvania Pension Plan, and denying the Petitioner, Charles Klavonick, a regular disability pension under the Plan, despite his having met all qualifications therefor?

II. Whether the United States Court of Appeals for the Third Circuit erred in affirming the Order of the lower Court?

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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

CHARLES KLAVONICK, PETITIONER

V.

THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS; AND THE BOARD OF TRUSTEES OF THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Charles Klavonick, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above captioned case on August 22, 1991.

REFERENCE TO THE OPINIONS DELIVERED IN THE COURTS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is unreported at No. 91-3163 and is printed in Appendix A attached hereto, at page 1a. The judgment of the United States District Court for the Western District of Pennsylvania is printed in Appendix B attached hereto, at page 19a.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals (Appendix A, page 8a) was entered on August 22, 1991. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1254.

STATUTE INVOLVED

This case involved the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 et seq.

STATEMENT OF THE CASE

The Petitioner, Charles Klavonick ("Klavonick"), originally filed this suit against the Respondent Ironworkers of Western Pennsylvania Benefit Plans; and the Board of Trustees of the Ironworkers of Western Pennsylvania Benefit Plans ("Board of Trustees") in the U.S. District Court for the Western District of Pennsylvania at Civil Action No. 88-1571, alleging violations of the Employees Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 et seq., and more particularly Section 1132(a)(1)(B) thereof. The lower Court had jurisdiction to hear the matter under 29 U.S.C. Section 1132(e).

The Petitioner became a union member and began employment as an ironworker under Ironworkers Union Number 3 of the International Association of Bridge, Structural and Ornamental Ironworkers on or about July, 1947. During the period of his employment through the above said Union, the Petitioner participated as a contributing member of the Ironworkers of Western Pennsylvania Pension Plan. The Petitioner continued in such employment until on or about November 12, 1982, at which time the Petitioner became totally and permanently disabled and was no longer able to engage in employment as an ironworker.

On or about March 4, 1983, the Petitioner timely made application for a Regular Disability Pension under the terms of the Trust Agreement of the Ironworkers of Western Pennsylvania Pension Plan.

Section 3.10 of the Plan provides, in relevant part:

"(e) *Regular Disability Pension:*

A participant may retire on a Regular Disability Pension if:

(i) He becomes totally and permanently disabled prior to age Sixty-five (65); and

(ii) He has at least five (5) full Pension Credits; and

(iii) Provided he worked in Covered Employment for a total of at least four hundred (400) hours in the period that consists of the Calendar Year in which he became disabled and the previous Calendar Year. ..."

In order to qualify for a Regular Disability Pension, a Participant must provide medical evidence of total and permanent disability so as to be prevented from engaging in any further gainful employment *as a construction worker,* and have been totally disabled for at least one (1) month.

Further, Section 3.10(a) of the Plan provides that the Trustees may require a medical examination by physicians retained by the Board of Trustees in order to obtain an independent certification as to total and permanent disability.

On April 24, 1983, a medical examination of the Petitioner was performed by Dr. J.D. Silverman, who, at that time, diagnosed the Petitioner as having pneumoconiosis, which precluded the Petitioner from returning to his prior job as an ironworker, or any similar type of construction environment, thereby rendering the Petitioner permanently and totally disabled.

On May 13, 1983, the Petitioner was notified by the Plan that the Petitioner's application for Regular Disability Pension had been denied by the Board of Trustees due to conflicting

medical reports, but that the Board had approved a Reduced Early Retirement Pension for the Petitioner.

On October 17, 1984, Referee Jack Kenney, a Pennsylvania Workmen's Compensation Referee, found the Petitioner to be totally disabled due to work-related injuries of pneumoconiosis, basing his decision on credible medical evidence including the medical report of Dr. Silverman dated April 24, 1983. Having been awarded Workmen's Compensation Benefits, the Petitioner became entitled to a Regular Disability Pension under Section 3.12 of the Plan, despite the earlier determination of the Board of Trustees.

Section 3.12 of the Plan provides, in full, as follows:

> *"Disability Benefits Payments:*
>
> Payments of the Disability Benefit shall commence as provided in Section 7.01 and 7.02 but no sooner than the beginning of the first month after the month in which disability begins and shall continue thereafter for so long as the recipient of the Disability Benefit remains totally and permanently disabled as herein defined, except that upon attainment of age sixty-five (65), the recipient shall have benefits continued regardless of whether or not he remains permanently and totally disabled, provided however, that he remains retired as defined in Section 7.06. *Notwithstanding the foregoing, in the event that a Participant is found to be entitled to a Worker's Compensation award, the Disability Pension for such Participant shall commence on the first day of the thirteenth month of total disability."* (Emphasis added.)

The Board of Trustees filed a Motion for Summary Judgment and Brief on or about March 22, 1989. The Petitioner responded to said Motion, and, in addition, filed his Motion

for Summary Judgment and Brief on or about October 18, 1989.

Oral Argument on the Cross Motions for Summary Judgment was scheduled and heard before U.S. District Court Judge Paul A. Simmons on May 16, 1990. After hearing, Judge Simmons granted the Petitioner's Motion for Summary Judgment and denied the Respondent's Motion for Summary Judgment.

It was the opinion of Judge Simmons that upon the Petitioner being awarded Workmen's Compensation Benefits, he was entitled to a regular disability pension commencing on the 1st day of the 13th month of total disability.

Judge Simmons also found that the "notwithstanding the foregoing" language of Section 3.12 of the Plan took away all discretionary power of the Respondent regarding the Petitioner's entitlement to a Regular Disability Pension upon the receipt of a Workmen's Compensation Award of Benefits.

Furthermore, Judge Simmons found that, because the Respondent was the drafter of the Plan document, common law rules of contract construction dictate that the plain language of the contract must be construed against the drafter.

Having found in favor of the Petitioner, the parties were ordered by Judge Simmons to prepare and submit proposed orders regarding the damages in the case.

The Respondent subsequently filed a Motion for Reconsideration of Judge Simmons' Order, and the Petitioner filed an Answer thereto.

Because of Judge Simmons retirement from the bench on or about December 30, 1990, the case was assigned to U.S. District Court Judge Alan N. Bloch for determination of the Respondent's Motion for Reconsideration. Without schedul-

ing a hearing on the Respondent's Motion for Reconsideration, and without hearing further argument on the parties' Cross Motions for Summary Judgment, Judge Bloch issued an Order on February 20, 1991 granting the Respondent's Motion for Reconsideration, and also granting the Respondent's Motion for Summary Judgment and denying the Petitioner's Motion for Summary Judgment.

In contrast to the reasoning of Judge Simmons, it was Judge Bloch's opinion that the "notwithstanding the foregoing" language of Section 3.12 of the Plan only speaks to commencement of benefits and not eligibility for benefits. Despite the apparent contradiction, it was also Judge Bloch's opinion that the Respondent's interpretation of the Plan was reasonable, and that the Court would defer to the Respondent's judgment and affirm its decision to deny the Petitioner a Regular Disability Pension.

The Court of Appeals expressed no disagreement with the District Court's findings, and found that the Respondent's decision to deny the Petitioner a Regular Disability Pension was supported by substantial evidence and the clear language of the Plan, and that the Respondent's actions were not arbitrary and capricious. The Court of Appeals, therefore, affirmed the Order of Judge Bloch of the U.S. District Court in its entirety.

REASONS FOR ALLOWANCE OF THE WRIT

It has long been recognized that the general objective of ERISA is to promote the interest of employees and their beneficiaries in employee benefit plans; to assure that those who participate in the plans actually receive the benefits to which they are entitled, and that the participants do not lose these benefits as a result of a lack of sufficient funds or unduly restrictive provisions. See generally 29 U.S.C. Section 1001 (setting forth congressional findings and declarations of policy regarding ERISA).

In *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 103 L.Ed. 2d 80, 109 S.Ct. 948 (1989), the Supreme Court recognized that because ERISA does not set out the appropriate standard of review for actions under Section 1132(a)(1)(B) challenging benefit eligibility determinations, the Federal Courts adopted the arbitrary and capricious standard developed under the Labor Management Relations Act. However, the Supreme Court also recognized that a comparison of the LMRA and ERISA shows that the wholesale importation of the arbitrary and capricious standard into ERISA is unwarranted. *Supra* 103 L.Ed. 2d at 91.

In determining the appropriate standard of review for actions under Section 1132(a)(1)(B), the Courts are guided by principles of trust law. *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 570, 86 L.Ed. 2d 447, 105 S.Ct. 2833 (1985). Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the Court except to prevent an abuse by the trustee of his discretion. See *Restatement (Second) of Trusts*, Section 187 (1959).

Section 3.12 of the subject Benefit Plan is entitled "Disability Benefit Payments". The last sentence in Section 3.12 states, in its entirety:

> "Notwithstanding the foregoing, in the event that a Participant is found to be entitled to a Workers Compensation award, the Disability Pension for such Participant shall commence on the first day of the thirteenth month of total disability."

The Respondent argued that the last sentence of Section 3.12 does not imply that a Workmen's Compensation finding of disability equates to a finding of disability under the Plan. However, in light of the "notwithstanding the foregoing" language of Section 3.12 of the Plan, it is immaterial whether the Petitioner has satisfied the subjective opinions of the Respondent concerning whether he has met the total disability requirements for Regular Disability Pension under the Plan. Such was the finding of Judge Simmons upon hearing oral argument on the Cross Motions for Summary Judgment on May 16, 1990.

Aside from the Respondent's subjective determination that the Petitioner is not totally disabled, it is clear that he has met all other eligibility requirements for a Regular Disability Pension under the Plan. Assuming arguendo that the Respondent had the discretionary authority to determine whether the Petitioner is totally disabled, this discretionary authority is overridden by the clear and precise "notwithstanding the foregoing" language of Section 3.12 of the Plan regarding entitlement to and commencement of regular disability pension payments once Petitioner became entitled to a Workmen's Compensation Award.

The Respondent further argued that the Trustees' interpretation of Section 3.12 should be upheld, even if the Court

disagrees with it, so long as the interpretation is rationally related to a valid Plan purpose and not contrary to the plain language of the Plan. However, the United States Supreme Court has recognized that courts

> "construe terms in trust agreements without deferring to either party's interpretation. The extent of the duties and powers of a trustee is determined by the rules of law that are applicable to the situation, and not the rules that the trustee or his attorney believes to be applicable, and by the terms of the trust as the Court may interpret them, and not as they may be interpreted by the trustee himself or by his attorney".

Firestone Tire and Rubber Co. v. Bruch, 103 L.Ed. 2d 80, 93 (1989).

In addition, the Courts have recognized that a rational and reasonable interpretation of a Plan may still be arbitrary and capricious if contrary to the plain meaning of the Plan. When the trustees' interpretation of the Plan is in direct conflict with the expressed language in a Plan, this action is a very strong indication of arbitrary and capricious behavior. *Gaines v. Amalgamated Ins.*, 753 F.2d 288, 291 (3d Cir. 1985).

Despite the lower Courts' holding to the contrary, it is clear from the plain language of Section 3.12 of the Plan that the drafters recognized that a Workmen's Compensation Award for total disability benefits would unequivocally and without further qualification entitle an individual to receive a regular disability pension under the Plan with said regular disability pension commencing upon the expiration of thirteen (13) months after the date the Plan participant became totally disabled. It is also clear from reading the plain language of Section 3.12 of the Plan that the drafters did not contemplate that a Plan participant would be required to prove his case of

total disability for purposes of being entitled to receive a regular disability pension under the Plan after having been awarded Workmen's Compensation Benefits.

It is hornbook law that in determining fairness and the proper meaning to be given to the words of an agreement, ambiguities will be construed against the party that drafted the agreement. See *Corbin on Contracts*, Section 559. For the lower Courts to hold that the Respondent's interpretation of Section 3.12 of the Plan was not arbitrary and capricious, despite the plain and unadulterated language contained therein, is a clear and arbitrary contradiction to generally accepted rules of construction regarding such agreements.

It is strongly urged that this Honorable Court grant the within Petition in order to give direction to the lower Courts regarding the limit to discretionary powers granted to Plan administrators in interpreting the terms and language of employee benefit plans. Further, Petitioner urges that this Honorable Court must act to preserve the rights of Petitioner and those rights of others like Petitioner so as to preserve the underlying objectives of ERISA in promoting the interest of employees and their beneficiaries, and assuring that those who participate in the plans actually receive the benefits to which they are entitled, and assuring that participants do not lose these benefits as a result of unduly restrictive contract provisions or arbitrary interpretations of those provisions.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted:
MICHAEL A. JOHNSON
Attorney for Petitioner

[APPENDIX A]

Not for Publication

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-3163

CHARLES KLAVONICK
Appellant
v.
IRONWORKERS LOCAL UNION NO. 3 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS; THE INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL & ORNAMENTAL IRONWORKERS; THE BOARD OF TRUSTEES OF THE IRONWORKERS BENEFIT PLANS OF WESTERN PA.; AND FRANK ALLEGRA, FRANK P. CAVA, LEONARD J. MURGI, EUGENE STAUFFER, DANIEL M. DAUGHERTY, BRIAN KEARNEY, CLAIR D. MORRIS, ROBERT J. SPILLAR, as individuals THE IRONWORKERS PENSION PLAN OF WESTERN PENNSYLVANIA

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D. C. Civil No. 88-01571)
District Judge: Hon. Alan N. Bloch

Submitted Under Third Circuit Rule 12(6)
August 12, 1991
BEFORE: COWEN and NYGAARD, *Circuit Judges* and POLLAK, *District Judge**
(Filed Aug. 22, 1991)

* Honorable Louis H. Pollak, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

MEMORANDUM OPINION

COWEN, *Circuit Judge.*

From 1947 until 1982, Charles Klavonick worked as an ironworker. During that time, he was a contributing member of the Iron Workers of Western Pennsylvania Benefit Plan (the "Plan"). Because he suffered from chronic respiratory difficulties, Klavonick applied for a regular disability pension on March 4, 1983, alleging total disability as of November 12, 1982. On May 13, 1983, Klavonick's application under the Plan was denied. On October 17, 1984, a Workers' Compensation referee determined that Klavonick was disabled as a result of work related injuries and awarded Klavonick Worker's Compensation Benefits. After the Trustees of the Plan denied Klavonick's application a second time on reconsideration, Klavonick filed this suit.

In this action, Klavonick alleges that the Plan and its Board of Trustees (the "Trustees") denied his application for regular disability benefits arbitrarily and capriciously in violation of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.* ("ERISA"). The Trustees claim that their decision was based on the medical evidence viewed as a whole indicating that Klavonick was not totally disabled within the meaning of the Plan and thus its denial of Klavonick's application was neither arbitrary nor capricious.

The parties filed cross-motions for summary judgment. On May 16, 1990, the Honorable Paul A. Simmons granted Klavonick's motion and denied the Trustees'. On May 25, 1990, the Trustees filed a motion for reconsideration. The case was reassigned to the Honorable Alan N. Bloch for resolution of the motion. On February 20, 1991, Judge Bloch granted the Trustees' motion for reconsideration and entered an order granting the Trustees' motion for summary judgment and

denying Klavonick's. It is from this order that Klavonick appeals. Our review of the order granting summary judgment is plenary. *Childers v. Joseph*, 842 F.2d 689 (3d Cir. 1988).

I.

A challenge to the denial of a claim to benefits under an ERISA plan under 29 U.S.C. §1132(a)(1)(B) is subject to *de novo* review by the district court, unless the benefit plan in question gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan. *Firestone Tire and Rubber Co. v. Bruch*, 109 S.Ct. 948, 956 (1989). Where a plan confers such discretion, the exercise of that discretion is subject to review under the abuse of discretion standard. *Id.; Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115 (3d Cir. 1990) (applying the "arbitrary and capricious standard ... because the plan [in question] contains provisions which gives [sic] the administrator discretion in making eligibility determinations."). Under the abuse of discretion standard, the district court, or this court when exercising plenary review of a district court, may reverse only if the decision is arbitrary, capricious, or irrational, or it employs improper standards or procedures. *Pennsylvania v. Local Union 542, Int'l Union of Operating Engineers*, 807 F.2d 330 (3d Cir. 1986). All parties to this litigation agree that the Plan confers discretion on the Trustee to determine eligibility to benefits and to construe the Plan. We will therefore review the Trustees' decision denying Klavonick a regular disability pension under the arbitrary and capricious standard.

II.

Klavonick filed his claim for benefits because he suffers from chronic respiratory problems which allegedly render him permanently unable to perform his job as an ironworker. The core issue of this appeal is whether the Trustees acted arbitrar-

ily and capriciously in concluding that Klavonick had not demonstrated that he was totally and permanently disabled as required by the Plan.

Under Section 3.10(a) of the Plan, "A Participant may retire on a Regular Disability Pension if: (i) he becomes permanently and totally disabled prior to age 65." The Plan continues,

> In order to qualify for a Regular Disability Pension, a Participant must provide medical evidence of total and permanent disability so as to be prevented from engaging in any further gainful employment as a construction worker and have been totally disabled for at least one month.

App. at 15a-17a. Section 3.10(a) also provides that the Trustees may require a medical examination by a physician of the Trustees' choosing in order to verify that the applicant is totally and permanently disabled.

After Klavonick applied for disability benefits, he was examined by a total of six physicians: three selected by Klavonick, and three selected by the Trustees. Based on an extensive record of medical reports, the Trustees concluded that Klavonick was not totally and permanently disabled so as to make him eligible for a regular disability benefit under the Plan.

Klavonick's first line of attack is that the Trustees' conclusion that he was not totally and permanently disabled within the meaning of the Plan was not supported by substantial evidence. We disagree. The Trustees had before them at least eight medical reports, three of which addressed the precise question whether Klavonick was totally and permanently disabled within the meaning of the Plan. One report concluded that he was; two others concluded that he was not. Because a

decision is based on substantial evidence where there are at least two medical reports which support it, even if there is another medical report which contradicts it, we must find that the Trustees' decision to deny Klavonick a regular disability pension was not arbitrary and capricious.

Klavonick next argues that the Trustees acted arbitrarily and capriciously in denying him a regular disability pension when they refused to grant him the pension after Klavonick was awarded Worker's Compensation Benefits. Section 3.12 of the Plan reads:

> Payments of the Disability Benefit shall commence as provided in Section 7.01 and 7.02 but no sooner than the beginning of the first month after the month in which disability begins and shall continue thereafter for so long as the recipient of the Disability Benefit remains totally and permanently disabled as herein defined. ... *Notwithstanding the foregoing, in the event that a Participant is found to be entitled to a Worker's Compensation award, the Disability Pension for such Participant shall commence on the first day of the thirteenth month of total disability.*

App. at 18a. Klavonick's theory is that since he was awarded Worker's Compensation Benefits on October 17, 1984, he became entitled to a regular disability pension starting from the thirteenth month after his disability began. He argues that section 3.12 clearly states that "Notwithstanding the foregoing," a Participant shall be paid benefits thirteenth months after his disability began if he is awarded Worker's Compensation Benefits. The problem with Klavonick's interpretation, however, is that it takes section 3.12 out of context.

It is clear from reading the Plan that section 3.10 establishes eligibility to regular disability pensions, and section 3.12

describes the timing of payment. Section 3.12 does not eliminate the eligibility requirements of section 3.10. The logic behind the language in section 3.12 concerning when disability payments begin if a person is also receiving Worker Compensation Benefits is to delay the payment of disability benefits for the twelve month period in which a claimant receives wage replacement benefits under Worker's Compensation. Contrary to Klavonick's suggestion, there is no support for the argument that an award of Worker's Compensation Benefits automatically entitled Klavonick to award of disability benefits under the Plan. Thus we cannot find that the Trustees abused their discretion in refusing to grant Klavonick's application for a regular disability pension after he was awarded Worker's Compensation Benefits.

III.

In conclusion, we find that the Trustees' decision to deny Klavonick a regular disability pension was supported by substantial evidence and the clear language of the Plan. We cannot find that the Trustees acted arbitrarily and capriciously in any respect. We will therefore affirm the order of the district court in its entirety.

TO THE CLERK:
Please file the foregoing Opinion.

/s/Robert E. Cowen
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-3163

CHARLES KLAVONICK
Appellant
v.
IRONWORKERS LOCAL UNION NO. 3 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS; THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS; THE BOARD OF TRUSTEES OF THE IRONWORKERS BENEFIT PLANS OF WESTERN PA.; AND FRANK ALLEGRA, FRANK P. CAVA, LEONARD J. MURGI, EUGENE STAUFFER, DANIEL M. DAUGHERTY, BRIAN KEARNEY, CLAIR D. MORRIS, ROBERT J. SPILLAR, as individuals THE IRONWORKERS PENSION PLAN OF WESTERN PENNSYLVANIA

On Appeal from the United States District Court for the Western District of Pennsylvania
(D.C. Civil No. 88-01571)

Submitted Under Third Circuit Rule 12(6)
August 12, 1991

BEFORE: COWEN and NYGAARD, *Circuit Judges* and POLLAK, *District Judge**

---

* Honorable Louis H. Pollak, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted under Third Circuit Rule 12(6) on August 12, 1991.

On consideration whereof, it is hereby ordered and adjudged that the judgment of the District Court entered on February 20, 1991, be and the same hereby is affirmed in all respects.

Costs taxed against appellant.

Attest:

/s/ Sally Mrvos
Clerk

AUG 22 1991

Costs taxed against Appellant, Charles Klavonick, as follows:

Brief..... $ 27.56

TOTAL..... $ 27.56

Certified as a true copy and issued in lieu
of a formal mandate on Sept 13, 1991.
Attest: /s/ M. Elizabeth Ferguson
Chief Deputy Clerk,
U.S. Court of Appeals for the Third Circuit

[APPENDIX B]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 88-1571

CHARLES KLAVONICK,

Plaintiff,

vs.

IRONWORKERS LOCAL UNION NO. 3 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS; THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS; THE BOARD OF TRUSTEES OF THE IRONWORKERS BENEFIT PLAN OF WESTERN PENNSYLVANIA; FRANK ALLEGRA, FANK [sic] P. CAVA, LEONARD J. MURGI, EUGENE STAUFFER, DANIEL M. DAUGHERTY, BRIAN KEARNEY, CLAIR D. MORISS [sic], and ROBERT J. SPILLAR, as individuals; and THE IRONWORKERS PENSION PLAN OF WESTERN PENNSYLVANIA,

Defendants.

MEMORANDUM OPINION

BLOCH, District J.

Plaintiff began employment as an ironworker and became a member of Ironworkers Local Union No. 3 of the International Association of Bridge, Structural & Ornamental Ironworkers in 1947. During the period of plaintiff's employment

with defendant, he participated as a contributing member of the Ironworkers of Western Pennsylvania Pension Plan (Plan) until 1982. On March 4, 1983, plaintiff applied for a Regular Disability Pension (RDP) under the terms of the Trust Agreement of the Plan. At that time, plaintiff complained of respiratory difficulties, chiefly shortness of breath. Prior medical history indicated diagnoses of congestive heart failure and chronic lung disease with bronchitis. (Answer to second amended complaint, Exhibit C). Plaintiff alleged disability under the Plan as of November 12, 1982. Plaintiff's application for RDP benefits was denied by the Trustees initially and on reconsideration.[1]

This case is before this Court on defendants' motion for reconsideration of an order of Judge Simmons dated May 16, 1990, granting plaintiff's motion for summary judgment and denying defendants' motion for summary judgment. This Court grants defendants' motion for reconsideration and, for the reasons stated herein, will deny plaintiff's motion for summary judgment and grant defendant's motion for summary judgment.

Section 3.10 of the Plan provides, in pertinent part:

> (a) *Regular Disability Pension*
>
> A Participant may retire on a Regular Disability Pension if:
>
> (i) he becomes permanently and totally disabled prior to age 65;
>
> (ii) he has at least five full pension credits; and
>
> (iii) provided he worked in Covered Employment for a total of at least 400 hours in the period that consists of the

[1] However, the Board of Trustees did approve a reduced early pension for plaintiff in the amount of $732.50 per month, effective as of April 1, 1983.

> Calendar Year in which he became disabled in the previous Calendar Year. ...
>
> In order to qualify for a Regular Disability Pension, a Participant must provide medical evidence of total and permanent disability so as to be prevented from engaging in any further gainful employment as a construction worker, and have been totally disabled for at least one month.

Section 3.10 may be defined as an "occupational disability provision," one which requires that an individual merely be unable to perform the duties of his particular occupation in order to be considered "disabled"; thus, recovery would not be barred if that individual is able to pursue other occupations. *Helms v. Monsanto,* 728 F.2d 1416, 1419 (11th Cir. 1984). In contrast, a "non-occupational, or general, disability pension, requires that an individual be unable to perform the duties of any occupation. *Id.* Section 3.10(a) further provides that the Trustees may require a medical examination by physicians retained by the Board of Trustees in order to obtain an independent certification as to total and permanent disability under the Plan. (Second amended complaint, Exhibit 2).

In connection with plaintiff's application for RDP benefits and pursuant to Section 3.10, he was examined by six physicians, three of his own choosing and three selected by the Plan.[2] Only three physicians addressed whether plaintiff was occupationally disabled, or disabled so as to be prevented from engaging in any further gainful employment as a construction worker, as mandated by Section 3.10 of the Plan. Two physi-

[2] One medical opinion, that of Dr. Mahta, simply stated that plaintiff was not suffering from any congestive heart problems. Dr. Mahta did not express any opinion as to plaintiff's disability.

cians gave opinions on general, or total and permanent disability.

Dr. Hayes, who examined plaintiff on March 28, 1983, stated that "in my opinion, none of the conditions mentioned would constitute a realistic basis for total and permanent disability status." (Answer to second amended complaint, Exhibit A). Similarly, Dr. Fino, a pulmonary specialist who examined plaintiff in May, 1985, stated that plaintiff was suffering from a mild industrial bronchitis but that he "[did] not think that he [was] totally and permanently disabled from a pulmonary standpoint secondary to his industrial exposure." He also stated that he did "not believe that Mr. Klavonick [was] totally and permanently disabled from a respiratory standpoint." (Answer to second amended complaint, Exhibit E).

In an earlier letter to the Trustees from Dr. Fino in June, 1983, Dr. Fino stated that plaintiff's condition "in no way is causing him permanent and total disability. It is also not a reason that he should not work in the same environment providing that he would use some type of respiratory mask." (Answer to second amended complaint, Exhibit C). Similarly, in April, 1983, plaintiff's own physician, Dr. Hall, opined that plaintiff was not totally and permanently disabled, and that he should be able to return to his work as an ironworker within four weeks. (Answer to second amended complaint, Exhibit B).

In contrast, plaintiff's personal physician, Dr. Silverman, was of the opinion that plaintiff was in fact occupationally disabled as defined by Section 3.10. Dr. Silverman examined plaintiff April 24, 1983, and in a letter to support plaintiff's request for Workers' Compensation benefits, Dr. Silverman stated:

> I feel that Mr. Klavonick has pneumoconiosis, probably mixed-dust and primarily arc welders'. This diagnosis occurred as a result of his multiple and cumulative exposures while employed as an ironworker in many areas. I think that this diagnosis alone in the absence of any other problems would preclude his returning to his prior jobs or any similar type of employment.

(Defendants' motion for summary judgment, Exhibit F). As a result of Dr. Silverman's opinion and testimony of plaintiff, a Pennsylvania Workers' Compensation Referee found plaintiff to be totally disabled from returning to his former occupation due to his total and cumulative exposure to various dusts. (Plaintiff's motion for summary judgment, Exhibit 2). The Referee's decision was dated October 17, 1984, declaring plaintiff to be occupationally disabled as of May 10, 1983.

The Trustees state that in denying RDP benefits, they relied on all six medical opinions, and on the Workers' Compensation Referee decision and a further medical report dated December 22, 1984, by plaintiff's physician, Dr. Macy I. Levine. As stated *supra,* only three physicians addressed whether plaintiff was occupationally disabled, two of whom found plaintiff to not be occupationally disabled (Drs. Fino and Hall), and one of whom found plaintiff to be occupationally disabled (Dr. Silverman). Due to the language of Section 3.10, the general disability opinions are to be disregarded since they are not instructive as to occupational disability.

A denial of benefits challenged under §1132 (a) (1) (B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.,* (ERISA) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan. *Firestone Tire*

and Rubber Co. v. Bruch, 489 U.S. 101, 112 (1988). If discretionary authority is vested in the Plan administrator or fiduciary, a denial of benefits is to be reviewed under the arbitrary and capricious standard. *Id. See also Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 570 (1985) (stating that in determining the appropriate standard of review for actions under §1132(a)(1)(B), the courts are guided by principles of trust law). The parties do not dispute that the Trustees are given discretionary authority under the Plan to determine applicants' eligibility for disability pension benefits, and this Court finds that based on the language of the Trust Agreement and the Plan[3] the arbitrary and capricious standard applies to their actions.

A decision is deemed arbitrary and capricious when the Plan Trustees' decision is not supported by substantial evidence, *Short v. Central States, Southeast & Southwest Areas Pension Fund*, 729 F.2d 567, 571 (8th Cir. 1984); *Pierce v. American Waterworks Co., Inc.*, 683 F. Supp. 996, 1000 (W. D. Pa. 1988), or is not rationally supported. *American Consumer, Inc. v. United States Postal Service*, 427 F. Supp. 589, 592 (E.D. Pa. 1977). *See also FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 803 (1978). This Court must determine whether the challenged decision resulted from a "consideration of the relevant factors and whether there has

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[3] Section 703 of the Plan provides:

> The Trustees shall be the sole judges of the standard of proof required in any case and of the application and interpretation of this Plan, and the decisions of the Trustees shall be final and binding on all parties.
>
> Wherever in the Plan the Trustees are given discretionary powers, they shall exercise such powers in a uniform and non-discriminatory manner. The Trustees shall process a claim for benefits as speedily as is feasible, consistent with the need for adequate information and proof necessary to establish the claimant's benefit rights and to commence the payment of benefits.

(Defendants' motion for summary judgment, affidavit of Robert Spiller, Exhibit G).

been a clear error of judgment." *Wolf v. National Shopmen Pension Fund*, 728 F.2d 182, 187 (3d Cir. 1984) *(citing Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285 (1974)). Unless the decision was irrational or unwarranted in law or without justification in fact, the challenged decision must remain intact. *Lucash v. Strick*, 602 F. Supp. 430, 434 (E.D. Pa. 1984), *aff'd.*, 760 F.2d 259 (3d Cir. 1985) *(citing Bowman*, 419 U.S. at 285).

A decision is deemed arbitrary and capricious when the Plan Trustees' decision is not supported by substantial evidence. *Short*, 729 F.2d at 571; *Pierce*, 683 F. Supp. at 1000. The opinions of Dr. Fino and Dr. Hall, plaintiff's own personal physician, are substantial evidence of plaintiff's failure to meet the occupational disability requirements of Section 3.10. The opinion of Dr. Silverman who found plaintiff to be occupationally disabled was also considered, but this opinion does not overcome the substantial evidence requirement of *Short* and *Pierce*. When evidence before the Trustees supports two reasonable but conflicting conclusions, the court should defer to the Trustees' judgment and affirm their decision. *Bali v. Blue Cross and Blue Shield Ass'n.*, 683 F. Supp. 1220, 1222 (N.D. Ill. 1988), *aff'd.*, 873 F.2d 1043 (7th Cir. 1989). Therefore, the Trustees' decision will remain intact on these grounds.

Plaintiff further asserts that the Trustees acted in an arbitrary and capricious manner in disregarding the Workers' Compensation decision finding plaintiff to be disabled. Specifically, plaintiff cites Section 3.12 of the Plan which states, in pertinent part:

> *Section 3.12 Disability Benefit Payments*
>
> Payments of the Disability Benefit shall commence as provided in Sections 7.01 and 7.02 but no sooner than the beginning of the first month after the month in which disability begins and shall continue thereafter for so long

> as the recipient of the Disability Benefit remains totally and permanently disabled as herein defined, except that upon attainment of age 65, the recipient shall have benefits continued regardless of whether or not he remains totally and permanently disabled, provided, however, that he remains retired as defined in Section 7.06. *Notwithstanding the foregoing, in the event that a participant is found to be entitled to a Workers' Compensation Award, the Disability Benefit for such Participant shall commence on the first day of the 13th month of total disability.*

(emphasis added). According to plaintiff, the last sentence of Section 3.12 wipes out all disability determinations by the Trustees, including the eligibility language of Section 3.10, making a Workers' Compensation determination a *de facto* declaration of disability under the Plan.

Plaintiff points out that the courts have long recognized that a rational and reasonable interpretation of a plan may still be arbitrary and capricious if contrary to the plain meaning of the plan. Plaintiff asserts that where, as in this case, the Trustees' interpretation of a plan is in direct conflict with the expressed language in a plan, this action is a very strong indication of arbitrary and capricious behavior. *Gaines v. Amalgamated Ins.*, 753 F.2d 288 (3d Cir. 1985). Therefore, plaintiff asserts that he is entitled to the RDP benefits as of June 1, 1984, thirteen months after plaintiff's disability date under Workers' Compensation.

Defendants contend that the entire language of Section 3.12 is clear, speaking only to commencement of disability benefits, not to eligibility for benefits. In other words, the "notwithstanding the foregoing" language only modifies the sentence immediately preceding it. Defendants cite Article IV, Section 3(q) of the Agreement and Declaration of Trust of the Plan, which provides that the Trustees are empowered

"[t]o decide all questions relating to the eligibility of employees for benefits under the Plan, and to decide the amount and kind of payment to such persons entitled to benefits, and rights of the members of the Plan with respect to this Trust." (Defendants' motion for summary judgment, affidavit of Robert Spiller, Exhibit H). According to defendants, Section 3(q) and Section 3.10 of the Plan empowers the Trustees alone to determine eligibility, not an outside party; therefore, a Workers' Compensation determination does not foreclose the ability of the Trustees to make their own decision regarding disability under the Plan.

This issue hinges on the plain meaning of Section 3.12 of the Plan. Interpretation of the Plan provisions is within the province of the Trustees, *McHugh v. Teamsters Pension Fund of Philadelphia,* 638 F. Supp. 1036 (E.D. Pa. 1986); *see also Gaines,* 753 F.2d at 289, and when evidence before the Trustees supports two reasonable but conflicting conclusions, this Court will defer to the Trustees' judgment and affirm. *Bali,* 683 F. Supp. at 1222. According to the Trustees, the obvious and legal purpose behind Section 3.12 is to delay the payment of disability benefits for a period of twelve months for claimants, like plaintiff, who are already receiving wage replacement benefits. On the other hand, pursuant to Section 3.12, claimants who are not involved in a work-related disability but who are disabled under the Plan can get immediate wage replacement benefits.

Defendants assert that there are important differences between the goals of Workers' Compensation and of ERISA, and that these differences include differing standards for eligibility. The purpose of the Pennsylvania Workers' Compensation Act is to provide the sole and exclusive means of recovery for all disabilities arising out of accidents occurring within the scope of one's employment. *Hartwell v. Allied*

Chemical Corp., 320 F. Supp. 75, 77 (W.D. Pa. 1970). In contrast, ERISA was enacted to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits by termination of pension plans before sufficient funds had been accumulated in the plans, so as to guarantee that a worker who has been promised certain benefits and who has fulfilled whatever conditions are required to obtain the benefits will actually receive them. *Pension Benefit Guaranty Corp. v. L.A. Gray & Co.*, 467 U.S. 717, 720 (1984); *see also Firestone*, 489 U.S. at 113. Although the remedial purpose behind the Pennsylvania Workers' Compensation Act has been fulfilled in this case, the Trustees have correctly determined that, based on substantial evidence, plaintiff has failed to fulfill the required conditions precedent to obtaining RDP benefits.

It is noteworthy that Section 3.12 discusses commencement of disability benefits payment. It is, therefore, rational to conclude that the "notwithstanding the foregoing language" therefore only speaks to commencement of benefits and not eligibility for benefits. Had the Trustees intended this language to apply in determining disability under the Plan, then Workers' Compensation awards would have also been discussed in Section 3.10. Because the Trustees' interpretation of this Plan is reasonable, this Court will defer to the Trustees' judgment and affirm their decision. Accordingly, this Court will grant defendants' motion for summary judgment and deny plaintiff's motion for summary judgment.

An appropriate Order will be issued.

Date: 2/20/91

/s/ Alan N. Bloch
United States District Judge

cc: Counsel of record.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 88-1571

CHARLES KLAVONICK,
Plaintiff,
vs.
IRONWORKERS LOCAL UNION NO. 3 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS; THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS; THE BOARD OF TRUSTEES OF THE IRONWORKERS BENEFIT PLAN OF WESTERN PENNSYLVANIA; FRANK ALLEGRA, FANK [sic] P. CAVA, LEONARD J. MURGI, EUGENE STAUFFER, DANIEL M. DAUGHERTY, BRIAN KEARNEY, CLAIR D. MORISS [sic], and ROBERT J. SPILLAR, as individuals; and THE IRONWORKERS PENSION PLAN OF WESTERN PENNSYLVANIA,
Defendants.

ORDER

AND NOW, this 20th day of February, 1991, upon consideration of Defendants' Motion for Reconsideration filed in the above captioned matter on May 25, 1990,

IT IS HEREBY ORDERED that said Motion is GRANTED. Upon reconsideration, and in accordance with this Court's Memorandum Opinion filed herewith, IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED and that Defendants' Motion for Summary Judgment is GRANTED.

/s/ Alan N. Bloch
United States District Judge

[APPENDIX C]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 88-1571

CHARLES KLAVONICK

Plaintiff

vs.

IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS, and THE BOARD OF TRUSTEES OF THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS

Defendants

PROCEEDINGS

Transcript of proceedings held on May 16, 1990, United States District Court, Pittsburgh, Pennsylvania, before Honorable Paul A. Simmons, District Judge.

APPEARANCES:

For the Plaintiff: By: Michael A. Johnson, Esq.
Paul J. Costelnock, Esq.

For the Defendants: By: Diane Hernon Chavis, Esq.

Reported by:
John Wayne Struble,
Official Court Reporter
1017B, U.S. Courthouse
Pittsburgh, Pa. 15219
(412) 391-5514

Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

THE COURT: Let's get on the record. Let's hear arguments. You have cross-motions here.

MR. JOHNSON: We have them first so if they'd like to go—

THE COURT: You want to be chivalrous.

MR. JOHNSON: Yes, sir. Absolutely.

THE COURT: Age of chivalry's not dead. What do you say, you want to go first?

MR. JOHNSON: That's fine with me.

THE COURT: Go first.

MR. JOHNSON: Your Honor, there are two issues.

THE COURT: Just a second. Just state the caption and secondly—off record.

(Discussion had off the record.)

THE COURT: Go ahead.

MR. JOHNSON: Your Honor, I am attorney Michael Johnson, appearing here today for Charles Klavonick, the plaintiff.

THE COURT: Off record.

(Discussion had off the record.)

THE COURT: Go ahead.

MR. JOHNSON: Representing Charles Klavonick, Plaintiff in the case of Charles Klavonick, plaintiff, versus the Ironworkers of Western Pennsylvania Benefit Plan and the Board of Trustees of the Ironworkers of Western Pennsylvania Benefit Plans who are the defendants, Civil Action No. 88-1578, filed in October of 1988.

Your Honor, there are two motions before you at this time. One is for a summary judgment based on interpretations of Section 3.10 of the plan filed by the defendants, and one based upon and filed by the plaintiff and argument that Section 3.12 is the section of the benefit plan that should control.

Section 3.10 basically has a standard of interpretation under the case law of Firestone and briefed, I think adequately, that the trustees have discretion to interpret the plan as far as eligibility and commencement of certain benefits to the plan beneficiaries, in this case Mr. Klavonick being one of them. The issue goes to Mr. Klavonick being a 30 year member being disabled on or about 11/2/82.

THE COURT: Thirty year union member?

MR. JOHNSON: That's correct, Your Honor. Thirty year union member. Also 30 year member who worked in the industry of construction as a welder, primarily, for 90 percent of his working time, breathing in welding dust and eventually contracting pneumoconiosis, which is arc welder dust related. This disease disabled him, we maintain, such that he could not return to the field of construction on and after 11/2/82.

THE COURT: That's November 2nd?

MR. JOHNSON: Yes, sir, November 2nd, 1982. He eventually sought medical care and under the care of Dr. Silverman discovered, on May 10th, 1983, that he could not return to any employment and made application—

THE COURT: You mean any gainful employment.

MR. JOHNSON: Yes, sir, any gainful employment at all, especially in the construction industry. And he then returned to the plan administrators and made application for his benefits, in particular, regular disability pension.

Many reviews took place. Ultimately he got a reduced early retirement pension which was somewhat less than that which he felt entitled to; that is, a regular disability pension. He had met all the criterion, and we have stipulated today that he had the appropriate number of hours of working and he had the appropriate number of pension credits.

THE COURT: Is that stipulation part of the record?

MR. JOHNSON: I'm going to make it so today. We have agreed to it and both of us have signed it. Attorney Chavis and myself.

THE COURT: Let's make this a Hearing Exhibit. Hearing Exhibit 1. And the Court hearing no objection will make Heating Exhibit 1—put Common Hearing Exhibit 1, or Joint might be better. Joint Exhibit—Joint Hearing Exhibit 1. Joint Hearing Exhibit 1, we'll call it that. And the Court will make that part of the official record.

All right, go ahead.

MR. JOHNSON: Basically there is no disagreement that he was qualified as far as hours and pension credits to receive the pension. The disagreement between the parties comes to whether he was totally disabled and permanently unable to continue in his occupation as a welder construction worker in the industry.

The trustees in this case interpret Section 3.10 to give them the ability and sole discretion to determine whether Mr. Klavonick in this instance was totally disabled and unable to continue as a construction worker and, therefore, entitled to a regular disability pension.

THE COURT: -All right. Now, as I understand, your opponents have filed an affidavit that in good faith they have

construed these different sections and they feel that your client is not entitled to the pension. How do you get around that?

MR. JOHNSON: I think in reading all of the reports, because as you well know, you can only review the record and decide whether it was rationally applied by way of a decision, and—

THE COURT: What do you mean it was rationally applied?

MR. JOHNSON: Whether or not the facts were considered and rationally applied to deny Mr. Klavonick a pension in this case. In particular—

THE COURT: Well, they say they have cited discretion, according to what I heard, you know, preliminarily when we were just discussing the case. That they looked at medical reports and the medical reports that they looked at were not supportive of Mr. Klavonick's position and, therefore, in their discretion that they don't have to follow the Workmen's Compensation rulings.

Secondly, under Section 3.12 of the agreement that even though the agreement said, notwithstanding the foregoing, in the event that a participant is found to be entitled to a Worker's Compensation award, the disability pension for such participant shall commence on the first day of the 13th month of total disability, they claim they can just ignore that language because they have total discretion. And if they have any rational basis for exercising discretion you're out of luck, your client's out of luck. What do you say about that?

MR. JOHNSON: Well, sir, based on their argument under 3.10—there's two separate things—3.12 and that's why we raised the motion 3.12, because we disagree with their interpretation.

THE COURT: Remember now, they say, yeah, you could argue rationally that Section 3.12 gives him the pension automatically because it's stipulated that he did get his Workmen's Compensation award. He gets the money right now. But they're not bound by that because they have other evidence that gainsays the validity of the award; that is, the Worker's Compensation award, and in their discretion they think that rationally—it's not arbitrary or capricious because they are basing their discretion on something that's rational and arguably supportive in the record and, therefore, in its exercise of its discretion they can deny him this pension even though other rational individuals would argue differently and decide differently.

MR. JOHNSON: In the first instance their standard for being able to review and their rationality cannot be unfettered, it cannot be arbitrary, cannot be capriciously applied. Assuming that's the case, we go forward to the actual issue.

THE COURT: You have cases on that, do you?

MR. JOHNSON: Yes, sir, we do. And they've been cited in our briefs. In particular, the discretion of these people under 3.10 is overridden.

THE COURT: That's 3.10 of the trust agreement?

MR. JOHNSON: 3.10 of the trust agreement or plan is part of the record and attached to our brief, yes, sir. Section 3.10, and their discretion therein, is distinguished from that of 3.12 which is overridden by the plain language of the document—

THE COURT: Which is? If somebody read what you just said, they wouldn't know what you talked about. You don't know what's overridden, you don't know how it's overridden or what else. Go ahead, sort of restate it, please.

MR. JOHNSON: Yes. Under Section 3.10, my opponents argue that their discretion allows them to determine who is and who is not totally disabled.

THE COURT: As long as they have some rational basis for their conclusion.

MR. JOHNSON: That is there argument, that's correct. It is our position that even if that is so, the record as it stands now before Your Honor does not substantiate their decision as being rationally mined in terms—

THE COURT: Rationally mined?

MR. JOHNSON: Rationally founded.

THE COURT: Founded?

MR. JOHNSON: Rationally founded in terms of the medical reports that they have relied upon. None of the medical reports, and I point this out in our brief, none of the medical reports—

THE COURT: Relied upon by the fund.

MR. JOHNSON:—relied upon by my opponent, the fund, yes, the benefit and the plan and trust administrators, stated unequivocally, except for the one that was placed by the claimant's Dr. Silverman, that this man can no longer work in the construction industry, as required under this plan trust agreement which is held to be occupational in nature and, therefore, you must determine whether the man can continue in his past occupation to determine whether he is or isn't totally disabled. Should he be able to do other work is not the issue under this plan. There's case law to back that up. The issue here is whether he can continue in the construction industry or not. I maintain—

THE COURT: As to that issue, what do the reports say?

MR. JOHNSON: Okay. And we can walk through each one of them if you want. Again, it's part of the record.

THE COURT: Well, are there any reports that fail to address that issue?

MR. JOHNSON: Yes, sir, all of them, in our opinion, except Dr. Silverman's, and we pointed that out.

THE COURT: Dr. Silverman, what does he say?

MR. JOHNSON: Dr. Silverman, in his report of 1983, states unequivocally, insofar as his other factors are concerned, however, I feel he has pneumoconiosis probably mixed dust and primarily arc welders. This diagnosis has occurred as a result of his multiple and cumulative exposures while employed as an ironworker in many areas. I think that this diagnosis alone, in the absence of any other problems, would preclude his returning to his prior job or any similar type of employment.

That is the requirement of this document that he state unequivocally that this man cannot return to construction.

THE COURT: Now, the other reports don't address that question?

MR. JOHNSON: The other reports generally skirt the issue and say, I don't think he can work. I think he can work. I think he can't work. But nobody speaks to the construction issue except Dr. Silverman. So, under 3.10—

THE COURT: In other words, this man possibly could work in some other area but still not be able to work as an ironworker?

MR. JOHNSON: And, therefore, qualify for a regular disability pension under this plan. Yes, sir, that's our maintenance. Further, I think the case law, and I think it was Gaines—was it not the case of Gaines—

THE COURT: Better get it accurately.

MR. JOHNSON: I will. I'll get a correct cite on that. Gains versus Amalgamated—

THE COURT: We're off the record for a minute.

(Discussion had off the record.)

THE COURT: Back on the record.

MR. JOHNSON: Yes, sir, I'm back on now. The case of Gaines, Gaines versus the Amalgamated Insurance Fund at 753 Federal Reporter Second, page 288 and going to page 292. In fact, I'll go to 289 first to set the background, please. This Court is basically setting forth the standards of review for plan documents.

THE COURT: This Court, meaning which Court?

MR. JOHNSON: This Court being the United States Court of Appeals, Third Circuit, and its decision being decided January 23rd, 1985.

THE COURT: And the case is?

MR. JOHNSON: Gaines versus Amalgamated Insurance Fund.

THE COURT: All right.

MR. JOHNSON: I gave the citation previously, sir.

THE COURT: You have done that, yes.

MR. JOHNSON: Judicial review of a pension plan document by the Trustees charged with administering the plan is limited to whether the Trustees' interpretation is arbitrary and capricious. Cite a number of cases. A plan interpretation should be upheld even if the Court disagrees with it so long as the interpretation is rationally related to a valid plan purpose and not contrary to the plain language of the plan.

THE COURT: All right, let me have that case and I'll give back to you.

MR. JOHNSON: Okay.

THE COURT: I'm speaking of the Gaines case.

MR. JOHNSON: I'm talking now about the Gaines case.

THE COURT: Still have the Gaines case?

MR. JOHNSON: Still giving you the information and background necessary to make arguments, sir. A rational and reasonable interpretation of a plan may still be arbitrary and capricious if contrary to the plain meaning of the plan. When the trustee's interpretation of a plan is in direct conflict with the express language in a plan, this action is a very strong indication of arbitrary and capricious behavior.

Then this Court basically went on to conclude at this case that this case—they were talking about if the framers of the plan had intended to establish a requirement such as that which the trustees now favor, the plan could easily have been worded in the terms of a date of entitlement to benefits within nine months, or explicitly stated that the date of actual payment, or retroactive payment date, must be within nine months.

Again, the same type of logic applies here. If they meant something—

THE COURT: In this case at bar.

MR. JOHNSON: Here in this particular case at bar, Charles Klavonick case. That is, that if the plan administrators, who are supposedly charged with drafting this document, had meant something different and had not meant the Workmen's Compensation award to override all of the requirements for eligibility under 3.10—

THE COURT: Which is your contention—

MR. JOHNSON: Yes, sir, it is.

THE COURT:—that in fact the fact this man got this award would cause the fund interpreting this agreement rationally to thereupon, without more, award him the money that he seeks and which he says he's entitled to under the terms of the plan.

MR. JOHNSON: Not only is it my contention, but the plan's plain language states the word entitlement and pension. Nowhere else in 3.12, Your Honor, does the word pension appear except that last sentence which says, notwithstanding the foregoing, wiping out everything above it.

THE COURT: Including 3.10.

MR. JOHNSON: In my opinion, therefore, the Workmen's Compensation award entitles this man to a payment of a disability pension without more.

But again stepping back, we contend that that would be if it controls, effective on the first day of the 13th month following his date of entitlement to disability, which in fact would be June 1st, 1984. And I don't wish to bog you down in dates, but that is a different standard as to when they would pay him once he becomes entitled. This man became disabled 11/2/82 based on the medical reports and his inability to return to any work within his occupation. Dr. Silverman's report state's that clearly.

The Workmen's Compensation award was effective May 10th, 1983 when the claimant, for the first time, informed his employer, because he had learned a few days hence, that, in fact, he had pneumoconiosis and it disabled him completely from going back to work.

So, our argument would be if 3.12 controls, that the date of effective pension, based on this section, would be June 1st, 1984.

THE COURT: Which section are you talking about now?

MR. JOHNSON: I'm sorry, Section 3.12 of the Ironworkers plan.

THE COURT: Okay.

MR. JOHNSON: Yes, sir. But I don't wish to just give 3.10 away, because it is my contention and we maintain that under 3.10 there are three elements to be met. The first element is that the man must be totally and permanently disabled. The second and third elements go to the number of pension credits and the hours worked. We stipulated to those.

My opponent states that they had sufficient medical information that they could conceivably deny this man rationally a regular disability pension because the evidence showed that he could not return to his—I'm sorry, the evidence showed that he could return to his occupation and that he was not totally disabled. We contend that they did not have that statement from any physician except that of Dr. Silverman who, by the way, was also the same doctor who was found to be credible by the Workmen's Compensation referee. Therefore, we contend that the man's pension should have commenced effective 11—I'm sorry, November 2nd, 1982, through the present, that he is due a credit against his early retirement pension which was awarded under the plan, that he should be paid the difference between that early retirement pension credit—I'm sorry, early retirement pension payment and the actual amount that he should have been due for a regular disability pension, plus interest, plus credit for any service dates that he would have lost because of this Workmen's Compensation award and the time it took, plus, in fact,

interest again on those items, and attorneys fees, which, of course, are in the discretion of the Court under ERISA.

THE COURT: I just looked at this stipulation. You don't stipulate as to whether or not the award was for a total disability.

MR. JOHNSON: The answer is that she would not agree to that and stated that—I'm saying she, Miss Chavis, my opponent, would not agree to that. She said the award, which is before you and part of the motion for summary judgment filed by the claimant Mr. Klavonick, states and speaks for itself. If we have to, I will turn to and I will show you exactly where it says total disability in that—

THE COURT: Better show it to me, because this doesn't mean a thing without that in there.

MR. JOHNSON: Understood. So, let me have some—you have before you in the file, you will have just for the record—

THE COURT: Do you have anything—

MR. JOHNSON:—all the findings of fact.

THE COURT: Do you have any attachments that would support your motion on this issue in your motion itself, attached to the motion?

MR. JOHNSON: Yes, I do, sir.

THE COURT: Wait a minute.

MR. JOHNSON: As Exhibit No. 1.

THE COURT: Let's look in the file and show it to me so I'll know where to find it if I need it.

MS. CHAVIS: Your Honor, the reason that I will not agree to stipulate to the inclusion of those words is just that when you read—when the Court reads the workmen's compensation

referee report, the Court will see what evidence he relied upon.

THE COURT: That doesn't have anything to do with it, ma'am.

MS. CHAVIS: If he found this man was totally permanently disabled and was entitled to an award on that basis, that speaks for itself. Is it there?

MR. JOHNSON: It was the opinion of the doctors, finding of fact—I'll read into the record—

THE COURT: Wait a minute.

MR. JOHNSON: It is an exhibit.

THE COURT: Don't go so fast. Don't get excited. First, take this and make a little tab on there so I can find where that is. Now, secondly, we've got plenty of those. You don't have to economize.

MS. CHAVIS: Your Honor, could we also mark page—

THE COURT: Just a second. Let him finish, then we'll give you a chance. No problem. Take your pencil—you got a red pencil and underline where it speaks of the total disability or whatever your point was there. Okay. Whatever you want on that page you have it tabbed. Is there anything that you want underlined that I should see?

MR. JOHNSON: If I may, Your Honor, I need one more tab.

THE COURT: Glad to accommodate you.

MR. JOHNSON: Thank you, sir. Okay, there are three separate pages I have marked, Your Honor, with tabs as well as red pen.

THE COURT: Off the record just a second.

(Discussion had off the record.)

THE COURT: Back on the record. All right now, you want to say something, ma'am.

MS. CHAVIS: Yes, Your Honor, I would like to underline a portion of the Workmen's Compensation referee award on page seven.

THE COURT: All right. Just a minute now. You underline yours with blue and hand it—

MS. CHAVIS: All right, Your Honor.

THE COURT: This is the official, so you put a tab where you want. Here's tabs.

MS. CHAVIS: Thank you, Your Honor.

THE COURT: On page seven and so I'll be able to, you know, look at all the various offers. Now, what does that say where you want to tab it, ma'am?

MS. CHAVIS: Your Honor, what I have underlined is what the referee based his decision on, the testimony of the claimant and the testimony of Dr. Silverman only.

THE COURT: But don't you think, though, that what he based his decision on has nothing to do with the fact that he did find the man permanently and totally disabled? If that's what he found, regardless of what he based it on, if as an administrative agency sanctioned by the laws of the Commonwealth of Pennsylvania, his final judgment would be the only controlling thing. I can't go behind—his ultimate finding was, as I understand it, this gentleman, Klavonick, was totally and permanently disabled.

MS. CHAVIS: My only point, Your Honor—

THE COURT: We can't collaterally attack the underlying findings of the Workmen's Compensation Board, I don't think.

MS. CHAVIS: I'm not attempting to do that, Your Honor, but what I'm attempting to do is point out that he had the

claimant's testimony and one report. The trustees had six reports and that's a major difference.

THE COURT: I don't think it makes any difference at all. That's what he found he found. He, the referee. Workmen's Compensation referee found the man totally and permanently disabled. You can't deny that; can you?

MS. CHAVIS: I cannot deny that the referee found him disabled based on what he looked at.

THE COURT: Well—but, ma'am, if he found him disabled, regardless of what he looked at, that is an official finding by the state agency.

MS. CHAVIS: Absolutely.

THE COURT: And I'm bound by that.

MR. JOHNSON: There was another doctor in here, too. So you're not led to believe differently, the referee did consider the testimony of another physician put in by the defendant Adams Steel in this case, a Dr. Gregory Randolph Owens, and the referee did not find his testimony credible but did find that of the claimant's credible; that is, Dr. Silverman's testimony more credible.

MS. CHAVIS: And, Your Honor, all I was trying to point out is that number one, the referee didn't have what the trustees did, and number two, the trustees were bound to look at everything.

THE COURT: It's too late now to undermine the referee's finding. I mean, he found it. It's never been reversed on appeal; has it?

MR. JOHNSON: Still receiving Workmen's Compensation to this day.

THE COURT: I don't know. I don't think we can collaterally—

MS. CHAVIS: You know another—

THE COURT: We're bound by collateral estoppel there, I think.

MS. CHAVIS: I don't believe we are, Your Honor. Because if we consider this—in this Workmen's Compensation hearing, say for instance, there were a multitude of employers, and if they didn't put their case on properly, if they didn't call up doctors or even have the man examined by doctors who would realistically and independently give an evaluation, why should the trustees in this case be bound by what the employers failed to do in another case?

THE COURT: You know why? Because of due process of law. And secondly, we are seeking economy and finality in the litigation of issues. So, this whole system, judicial system of the country would fall apart if we didn't have the finality or we didn't give finality to final judgments and determinations. And so, in order to achieve finality, as a public policy we have originated the rule of collateral estoppel. That you're estopped from going behind a judgment or a determination by a judicial agency once that agency has given its decision and it has withstood the rigors of possible appeals or reversals, then that ends it. And the system can only survive if we end litigation in some manner.

And even though the original judgment may have been improper, and even though I, as a, for example, rational fact finder would have found things differently, we're still bound by what the agency found. And the agreement, from what I see in Section 3.12 of the trust, so states that. It gives finality to the Workmen's Compensation award. Otherwise, we would be litigating and relitigating issues from time on and time immemorial.

So, in order to terminate litigation, bring it to a close so that we can have finality to business matters and judgments generally, and so people know where they stand, we have to bring litigation to an end, and we are not permitted to just litigate and relitigate the same issues just ad infinitum. We have to bring it to a close.

MS. CHAVIS: Your Honor, my understanding of the doctrine of collateral estoppel is that there are certain criteria that need to be met for the doctrine to apply. And one of the very important criteria is that the parties to the prior proceeding are the parties that are presently parties to this proceeding. In the prior proceeding, the Workmen's Compensation hearing, my client wasn't a party.

THE COURT: No, no. But see, what happened, you know, gainsay your point, I think, is that your agreement, the trust fund agreement, the trust itself sets forth the terms of the understanding of the parties. And your people agreed to be bound by whatever the Workmen's Compensation people determined, you see. That's why you're collaterally estopped. You people, in writing, with a signed agreement, says we will yield our fact finding potential and rights to whatever the Workmen's Compensation people do and find. And that's what you did. Now, you did this by contract. You delegated to the Workmen's Compensation Board the right to make this determination. And you said we'll be bound by whatever they say or do.

MS. CHAVIS: Your Honor, the trustees have never interpreted Section 3.12 to be such, and that's in the affidavit.

THE COURT: Well, in plain English, though, this is what 12 says. I don't care how many affidavits—they can swear until they get blue in the face, but this is what it says in plain unadulterated English in Section 3.12 of the agreement. It

says, notwithstanding the foregoing that is all the clauses above—in the event that a participant is found to be entitled to a Worker's Compensation award—in this case it is undenied that this man was given a Worker's Compensation award. It wasn't stipulated to but it's undenied. I mean, you have not denied that the man has been given the award. And you cannot truthfully deny that he is not getting his compensation money.

And then it goes on to say, the disability pension for such participant shall commence—mandatory language—on the first day of the 13th month of total disability.

And the man was given his award. The English is so plain and unadulterated that no human being who is rational, has his faculties about him, can construe it other than what I'm saying.

So listen, you're a lawyer, and I'm going to say this advisedly, you see that language, and there's no other interpretation that these fund people can make of that language other than the fact that if the award is given you people are going to act accordingly.

Now, let's be fair and frank. Just don't hang onto an argument if you believe in your mind, in your soul of souls, that you know you're wrong. I mean, don't just hang on just to try to make a point or impress a client. That language is so clear that no rational person can come to any conclusion other than what I think the plaintiffs are talking about. We have to be fair. That's what we're here for, fairness.

And a lot of times in life—you can't win every case you engage in. And just to doggedly try to win a case, or just make arguments upon arguments when you know there's no substance to them, that's not the way the system should work.

Here's a case where—that's why I opened up the discussion by saying let's talk about settlement. After I skimmed

through this material, talked about it with my clerk, I said, this is not the kind of case that we even should be litigating in here, in my opinion. To put this man to all this trouble, in the face of that kind of language, in the face of the fact that he was awarded—true, maybe the people in the compensation case didn't properly represent the parties against whom a claim was made, or the Board or whatever, but, nevertheless, the referee, for whatever reason or however, he did make the award. And once that was done, even though it was done maybe on evidence that was not proper, or evidence that should not have been admitted, or for whatever, that judgment is there and you, by contract—your people by contract have agreed to abide by it. And that seems to be what's happened here, you see.

MS. CHAVIS: Your Honor—

THE COURT: I'm sorry. But, go ahead.

MS. CHAVIS: Your Honor, may I make one final point.

THE COURT: You can make a lot of points. I mean, there's no rush. I'm not pushing you at all. I'll listen to you. And I've been known to change my mind many times.

MS. CHAVIS: I'd like to run through my argument later, but I only want to make one point now on this language—

THE COURT: All right.

MS. CHAVIS:—notwithstanding the foregoing, that we keep looking at in Section 3.12.

THE COURT: It says in plain English, notwithstanding the foregoing. Notwithstanding 3.10 or 3.9 or 3.8 or 3.7. It says once that award is made—you agree to this now. In other words, you agree to be collaterally estopped by the Workmen's Compensation award. You see, this is not the classic case of the collateral estoppel, you're right there, but once you agree to

be bound by the actions of an official administrative board created by the General Assembly of the Commonwealth of Pennsylvania, that's pretty official and you're bound by that.

And your people are bound by that and they wittingly understood that they were bound by that. They knew what they were doing when they signed this, if you want to know the truth. But I would ask, but I believe the answer would be this, I'm sure that the fund people drew this up. I mean, this was done by the Board of Trustees of the Ironworkers and so on, they drew all this up, presumably to regulate the functioning of the fund, and it should be construed against them because they're the people who drew up this language and said, you know, this is what we're going to do, you know.

Let me hear—I want to hear your full arguments now at this point. You argued enough, okay.

MR. JOHNSON: Yes, sir.

THE COURT: For your side.

MR. JOHNSON: Other than—may I just point out, if I may, one thing. I know it seems perhaps redundant, you summarized more better than I ever could

THE COURT: Let me say something to you. Once you hear what the Judge is saying, if he's not hurting you, what should a good lawyer do?

MR. JOHNSON: I just want to tell you, the United States Supreme Court agrees with you, that's all. I wanted to tell you that and I told you that. I should sit down and be quiet, Your Honor.

THE COURT: Yes. The young lady might change my mind now. I don't want—

MR. JOHNSON: Perfectly understood.

THE COURT: You might convince me otherwise. I want to hear you. That's what I want to hear in detail what your argument is in the light of what I said.

MS. CHAVIS: All right. Your Honor, all I'd like you to think about while I'm giving the argument is to think about whether the notwithstanding the foregoing language only modifies the sentence that's right before it that talks about commencement, not eligibility, and we'll get to that, but I'd like the Court to think about that during the argument.

THE COURT: You got a point for me to think about.

MS. CHAVIS: Okay. Thank you.

THE COURT: I would certainly agree with that.

MS. CHAVIS: Your Honor, really the only issue before the Court is did the trustees act arbitrarily and capriciously in denying the claimant's application for disability pension benefits. And we've agreed that the standard to be applied in the case is the Firestone standard, the Supreme Court '89 decision, and based on Firestone, this Court looks at the denial of benefits to see if the trustee's decision was arbitrary and capricious. And courts, and I have it in citations in my brief—

THE COURT: Sure.

MS. CHAVIS:—say that a decision is not arbitrary and capricious if it's supported by substantial evidence. Now, what's substantial evidence? I have a decision in another opinion in my brief that says substantial evidence is relevant evidence which a body can look at and make a reasonable conclusion.

THE COURT: All right. But now the question though—

MS. CHAVIS: Okay.

THE COURT: I think that you really have to address, except for this last sentence of Section 3.12, 3.12, which is a 12, you would be absolutely right. I would rule for you in a

minute except for this language which says, notwithstanding the foregoing, in the event that a participant is found to be entitled to Worker's Compensation award. See, once that award has been given or granted by this Compensation Board, you give up all your rights to find facts and all these other things at that point.

In other words, had there been no compensation award, you'd be right. But what your fund has done, you have said, okay, we're going to give up our rights to find all the facts if there's a compensation award. We're—there's no—we're not going to go into the question of whether he's entitled or not entitled, the Board says he is entitled and that's enough. And that's where you're caught. That's where you got problems.

If you—if this one little sentence was taken out of here, I would be inclined to agree with you, definitely. But they have yielded or given up their rights to find facts if the Board has, prior to your finding of the facts, found facts differently, or in a sense that they did find, the Worker's Compensation Board did find that the man was disabled totally and permanently. And in that event you say your people have said, well, we give up our right to make the determination because the Board has made it for us. And we're going to abide by what the Board has said.

You see, you're right if you had a right to make the determination. But you have ceded, given up your right to even inquire into the question as to whether the man's disabled or not, because you're saying whatever the Board says on this subject affirmatively, that is in giving him the right to the award that is, and also a finding of total and permanent disability, once they find that, we're going to adopt the Board's findings and we're finished. That's what the Board's saying. And they agreed to that.

See, why should they agree to that? That's not my business. But they did and they can't welsh on their word now. They said, we'll follow what the—the Board said the man's totally and permanently disabled and they give the man an award we'll adopt it.

MS. CHAVIS: I ought to point out to the Court that we made—the trustees made their determination that he was not entitled on May 13th of '83. The referee for the Workmen's Compensation didn't render his award until over a year and a half later, October 17th, '84.

THE COURT: But you still agreed that whatever the Board did you'd follow it. That's what you said. Now, you didn't have to do this. You didn't have—and I'll tell you something else, the rule of construction is, whoever writes up the agreement, the agreement's most definitely construed against the people who drafted this language. And since you drafted it, you're in trouble.

I'm just—you know, I can't change the language. It says that in the event a participant—I'm reading the last sentence in Section 3.12—is found to be entitled to—in the event. Doesn't say when, either. Just any time. Once that event is found, if the participant is found to be entitled to a Worker's Compensation award, the disability pension for such participant shall commence—shall, mandatory—on the first day of the 13th month of total disability. Mandatory. Not shall or may—I mean, it is shall, it's not may or perhaps, it is mandatory language, shall commence. The pension shall commence if he's given the award.

Now, that language is so plain, so clear, so unadulterated, so obvious. I don't think—I can't see how I can construe anything but what it says.

MS. CHAVIS: Your Honor, when the claimant went to apply for Social Security disability he didn't—they didn't agree with him. They—he didn't get Social Security disability until '85.

THE COURT: That doesn't help you any because they're not talking about Social Security. Talking Worker's Compensation award, not Social Security award.

See, there's two different things. You agree—I mean, the fund agrees, not you personally, the fund agrees if this award is given, shall commence. They're going to give him that money regardless of what they may have found or didn't find, or what Social Security did or didn't do, or what they found earlier or didn't find. They agree if the Worker's Compensation Board finds it, that's it. That ends it. And immediately by operation of the agreement, automatically the first day of the 13th month, that is what they're really saying, one year after the finding, he starts getting his money. And that is so clear, so unadulterated, so obvious. What can I do? I didn't write this up. I'm referring to the agreement. I didn't have anything to do with it except to, you know, construe the case.

MS. CHAVIS: Your Honor, remember when I started the argument I asked you, would you keep something in mind?

THE COURT: I know what you're saying. You're saying keep it says that notwithstanding the foregoing in mind. That's what you told me.

MS. CHAVIS: Yes.

THE COURT: And I have that very much in mind, but that really cements the position of the plaintiff, that language.

MS. CHAVIS: Maybe I haven't been clear. What I want to express is it is the trustee's position that the notwithstanding the foregoing language modifies only the language in Section

3.12, and Section 3.12 does not deal with eligibility but only commencement. So, notwithstanding the foregoing modifies the first sentence which talks about when benefits will start if they're awarded.

THE COURT: Ma'am, it doesn't say that at all. It says, in the event the participant is found to be entitled to Worker's Compensation—the only condition is him, him the participant, being found entitled to the award. Everybody agrees, and it's stipulated in the record, it's absolutely uncontested the man got—this fellow Klavonick got the award. Once he gets the award, the next question is what happens when he gets such an award? The answer is very plain, clear, unadulterated. Nobody, no Board, no fund, no human being, and I'll say this categorically and all encompassing, can read this language any differently than the way it reads. Once the man gets the award, the Worker's Compensation award, which is—it's admitted by everybody he got the award. What is the obligation of the fund when he gets such an award? It says so. The obligation's start paying him on the first day of the 13th month after the date of the award. Those facts are just so clear, so uncontested, so obvious, I don't know how we're going to get around them, to be honest with you.

MS. CHAVIS: Your Honor—

THE COURT: I don't know. All I am doing is reading the language that is clear, unambiguous. And—see, you're arguing matters of whether or not—really as to whether or not the Worker's Compensation Board was correct in making the award. Well, that's immaterial. You have agreed that once the award is made you're going to do certain things, and the operative thing that makes it clear in this case is that you're going to start paying the man. Which is all right, that's what you ought to do. When you make an agreement you ought to

honor it. And for this little bit of money, I think—you know, we're just—you know, especially in the face of this language. I don't see what the contention really is, honest.

Now, if you're going to make a big thing of it, you can take it on to the Supreme Court of the United States and do what you feel you've got to do, but it's so clear. I don't really see how we can come to a different conclusion.

MS. CHAVIS: May I make one final point, Your Honor.

THE COURT: You can. You're welcome to make four or five final points if you want.

MS. CHAVIS: Would the Court just read along with me the first sentence of Section 3.12.

THE COURT: I'll read it, sure. It says, payments of the disability benefits shall commence provided—as provided in Section 701—7.01 and 7.02 but no sooner than the beginning of the first month after the month in which disability begins—

MS. CHAVIS: We can stop.

THE COURT:—and shall continue thereafter for so long as the recipient of the disability benefit remains totally and permanently disabled as herein defined, except that upon attainment of age 65, the recipient shall have benefits and so on. Go ahead.

MS. CHAVIS: In other words, Your Honor, that first sentence that we've just read says that if you're entitled to benefits this is when they'll start.

THE COURT: Yeah, that's true.

MS. CHAVIS: Then we come to the notwithstanding the foregoing language. The sentence before said, if you're entitled, your benefits will start one month after your disability. The last sentence says, notwithstanding what we just said about commencement—

THE COURT: If you get an award. Don't forget that. If you get the award, schools out. As we said before, doesn't mean a thing. That award controls now, and one year later you get your money. Start getting your monthly payments. It's clear. There's no doubt about it.

Okay, I've heard enough here. I think we've given everybody a very fair chance. What I'm going to do, based on the stipulated facts here in this case, based on the fact that it's uncontested, that the—this gentleman Klavonick received a total and permanent disability award from the Worker's Compensation Board of the Commonwealth of Pennsylvania, and in the light of the fact that he got such an award, the agreement says specifically, clearly, unambiguously, and I'm reading from Section 3.12, in the event the participant is entitled to a Worker's Compensation award—in this case he was so found to be entitled, that is an uncontested fact—the disability pension shall commence one year later, and that's an uncontested fact. One year has passed; am I correct?

MR. JOHNSON: Yes, sir, it has.

THE COURT: And I don't think there's any argument about that. So, this gentleman's entitled to this money.

Now, the only question is, what are the damages? And you submit a suggested order saying that I am going to award the disability pension, which shall commence the first day of the 13th month after the date of that award, and the damages shall be as follows: Give me a suggested order and give a copy to your opponent. Both make comments. And if you can agree on a suggested order, just for the sake of this, without any prejudice to you to appeal. In other words, merely the fact you're suggesting what the award in terms of money should be doesn't mean that you're in any way forfeiting any of your rights to appeal or take exceptions to what I'm saying here.

MS. CHAVIS: Yes, Your Honor.

THE COURT: And the order also should say that the Court has set forth the reasons for his decision in the record and an opinion will not be necessary. Okay.

Now, if you want to appeal, you might—you know, just—let's get off record.

(Discussion had off the record.)

THE COURT: Put this on the record. I want the record to indicate that I am holding for the plaintiff on the basic issue, and that is, the Court finds that Charles Klavonick is a participant under the terms of the contract, the trust agreement which is—off record.

(Discussion had off the record.)

THE COURT: Under the Ironworkers Pension Plan of Western Pennsylvania as amended, and that as a claimant, for the reasons set forth in the record, he's entitled to—and as a person who has an award from the Commonwealth of Pennsylvania Worker's Compensation Board he is totally and permanently disabled, and under those circumstances, pursuant to Section 3.12 of the trust agreement, Mr. Charles Klavonick is entitled to judgment on the issue of eligibility and the only issue that remains has to do with the computation of lost benefits and the interest, if any. Off record.

(Discussion had off the record.)

THE COURT: How much time do you need to submit this?

MR. JOHNSON: Five days, sir.

THE COURT: All right, five days. And I think, just out of an abundance of caution, you ought to file a notice of appeal with the clerk, just in case you want to do this. Or after you

consulted over—you know, consult the matter with your trustee board, okay.

MS. CHAVIS: Yes, sir.

THE COURT: Because I don't want in any way to prejudice your right, you follow me.

MS. CHAVIS: Yes, Your Honor.

THE COURT: Okay. That ends this case. All right.

MR. JOHNSON: Want us to mail it, Your Honor? If we can mail it. We're coming from Mount Pleasant.

THE COURT: You're in Mount Pleasant? You live up there?

MR. JOHNSON: Yes, sir.

THE COURT: You can send it down. Off record.

(Discussion had off the record.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ John Wayne Struble,
Official Court Reporter